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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

In re A.E., a Person Coming Under the
Juvenile Court Law.

BUTTE COUNTY DEPARTMENT OF EMPLOYMENT
AND SOCIAL SERVICES,

Plaintiff and Respondent,

v.

J.S.,

Defendant and Appellant.

C061432

(Super. Ct. No. J-33206)

Appellant J.S., mother of A.E. (the minor),¹ appeals
from orders of the juvenile court denying her petition for

¹ The minor was born in February 2007. She was detained the day
after her birth.

modification and terminating her parental rights.² (Welf. & Inst. Code, §§ 366.26, 388, 395.)³

Appellant contends the juvenile court's denial of her request to modify the court order (§ 388) was an abuse of discretion and, as a result thereof, the court's subsequent order terminating her parental rights was invalid. We will affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant is the mother of six children, one of whom is deceased. In May 1997, appellant's first two children were detained and placed into protective custody after she was arrested for being under the influence of methamphetamine and for violating parole. Appellant's parental rights were eventually terminated and those two children were ordered into a permanent plan of adoption with the maternal grandparents.

Appellant tested positive for methamphetamine while pregnant with her third child. In January 2001, the third child was detained and placed into protective custody after testing positive for methamphetamine. Reunification services were eventually terminated and appellant signed documents relinquishing her parental rights. That child was later adopted by a foster family.

² The minor's father is not a party to this appeal. Facts related to the father will be referenced only when relevant.

³ Hereafter, undesignated statutory references are to the Welfare and Institutions Code.

In August 2004, while living with the maternal grandparents, appellant's fourth child, just seven months old, drowned after being left unattended in the bathtub by the maternal grandmother, who "went to answer the telephone" and "then took a second call."

In November 2005, appellant's fifth child was detained and placed in protective custody after appellant tested positive for methamphetamine. Appellant was not offered reunification services pursuant to section 361.5, subdivision (b)(10) and (11).

In February 2007, while being transported from county jail to court for a sentencing hearing related to a probation violation, appellant, pregnant with her sixth child, began hemorrhaging. She was transported to the hospital, where she gave birth to the minor approximately one month prior to the scheduled due date. Appellant spoke with social worker Mimi Greminger and admitted having used methamphetamine twice during the pregnancy. Appellant explained that she had been on Proposition 36 probation since July 2006, and had participated in group meetings and two parenting classes and attended weekly Narcotics Anonymous (NA) meetings before relapsing in August 2006 and being sent to jail in January 2007.⁴ The minor was detained.

⁴ The minor's father was incarcerated in state prison at the time.

In February 2007, the Butte County Department of Employment and Social Services (the Department) filed a juvenile dependency petition pursuant to section 300 on behalf of the minor. That petition alleged, in part, that appellant admitted using methamphetamine during her pregnancy with the minor, for which she was arrested and jailed for violating the terms of her probation and court-ordered drug rehabilitation. The petition also alleged appellant failed to reunify with the minor's four half siblings.

The juvenile court sustained the allegations in the petition and adjudged the minor a dependent child of the court. (§ 300, subds. (a), (b), & (j).)

The disposition report recommended services not be offered to appellant in accordance with section 361.5, subdivision (b)(10) and (11).

At the contested disposition hearing, appellant testified she was attending NA meetings and receiving other substance abuse services and had been drug free for 102 days. Appellant said she was serious about her recovery from substance abuse, and believed that continued services would assist her in coping with her addiction.

Appellant acknowledged she had been using illegal drugs for 14 years and that she used while on Proposition 36 probation. She had begun one inpatient drug rehabilitation program but failed to complete it. As a result of two prior probation violations and her admission to having used methamphetamine in January 2007, appellant was terminated from Proposition 36

probation. On the day appellant gave birth to the minor, she was to appear in court for sentencing on a felony drug charge and placed in the Family Foundations Program (FFP), an in-custody substance abuse treatment program. After the minor was detained, appellant's enrollment in FFP was dependent upon whether she received reunification services.

Social worker Greminger testified appellant had been accepted into the FFP but no order had been issued directing appellant's enrollment. After the minor was detained, the Department decided to test appellant's commitment to sobriety by requiring appellant to attend daily NA meetings. The social worker advised appellant that if she missed a meeting, in light of appellant's extensive history with the Department, it would question appellant's commitment to sobriety. When it learned appellant had missed some meetings, the Department decided to recommend denying appellant reunification services. Greminger admitted that appellant had attended other meetings and was cooperative with her.

Greminger recommended that no services be provided to appellant. Greminger stated she would not support placement of appellant in FFP because of appellant's history and continued use of controlled substances, telling the court she continued to have "concerns about [appellant's] commitment to her sobriety."

A therapist from a Proposition 36 treatment group attended by appellant testified that, despite being terminated from the Proposition 36 drug program, appellant asked if she could "come back to Prop. 36 and attend groups." According to the

therapist, appellant had made "exceptional progress" in the treatment group. Acknowledging appellant had had two relapses, the therapist opined those "slips" did not indicate continued substance abuse. He also told the juvenile court appellant had admitted being an addict and that he noticed a dramatic positive change in her attitude.

At the conclusion of the disposition hearing, the juvenile court denied appellant reunification services, ruling the evidence showed she had "failed to make reasonable efforts to overcome the drug addiction that caused the loss of [other] children up until the time that she was terminated from Prop. 36." The court adjudged the minor a dependent child of the juvenile court.

In July 2007, appellant filed a petition for modification, requesting an order for the minor to be placed with her in a plan of family maintenance. In support of her claim that the modification she sought would be in the best interest of the minor, appellant alleged she had visited with the minor, those visits went well, and placement of the minor with appellant at FFP "would provide a safe, controlled environment so that [they] could develop a secure attachment."

At the August 2007 hearing on the petition for modification, the Department advised the juvenile court that FFP would enroll appellant in the program only if the Department agreed to the minor's placement with appellant in FFP. The Department then repeated its recommendation that appellant be denied reunification services and objected to placement of the

minor with appellant in FFP. The Department asked the court to deny appellant's petition for modification.

The juvenile court denied the petition for modification, ruling it was too soon to know whether appellant had overcome her substance abuse problem, and that she had failed to show modification would be in the best interest of the minor.

Appellant appealed the juvenile court's denial of her section 388 petition. This court affirmed the order of the juvenile court.

The September 2007 status review report stated appellant was in custody in county jail awaiting transfer to state prison. The minor was developmentally delayed--unable to sit up, roll over, or bear any weight on her legs. However, she was reportedly "thriving in her current environment."

The February 2008 status review report stated appellant was in custody in state prison, but was scheduled to be released to the Skyway House treatment center in June 2008. Appellant provided the Department with certificates of classes she completed while in prison. The one-year-old minor was reportedly functioning at a six- to eight-month level, unable to hold her own cup or bear any weight on her legs. However, she was able to sit up on her own and was starting to crawl. The minor's developmental delays were being addressed through weekly physical and occupational therapy. Despite these problems, she was "thriving in her current environment." Appellant's visits with the minor stopped after she was transported to state prison. However, appellant colored

pictures and sent them to the minor about once a week. The report stated that "[f]uture visits do not appear to be in [the minor's] best interest. Visits with both [appellant] and father when they are released from prison would be detrimental, as [the minor] will be moving towards permanency. She has not seen [appellant] since September 26, 2007 and she has not seen her father since November 1, 2007. [The minor] needs to bond and stabilize in her new home with as little interruption[] as possible." The report also noted that the minor had been in her current foster placement since she was only a few weeks old, and had been receiving the care required for her special needs. The Department recommended father's reunification services be terminated and the matter set for a permanency hearing pursuant to section 366.26.

That recommendation was echoed by the Department in an addendum report filed in July 2008.

At the 12-month review hearing, the court adopted the Department's recommendations, terminating father's reunification services, terminating visitation for both appellant and father, and setting the matter for a permanency hearing.

The section 366.26 report filed in October 2008 recommended that appellant's and father's parental rights be terminated. The minor continued to have physical and developmental therapy twice monthly to address her developmental delays. The report concluded the minor was adoptable and noted she was "bonded to her caretakers and is thriving in this family."

In November 2008, appellant filed a second section 388 petition requesting the court to modify its prior order denying reunification services and order the minor into a plan of family maintenance with appellant or, alternatively, to order reunification services for appellant. In support of the petition, appellant attached her own declaration, pictures, letters of support from friends, family, counselors, teachers, sponsors and case managers, and certificates of completion from various programs.

At the hearing on the section 388 petition, appellant testified regarding her incarceration and her participation in and completion of various programs, including alcohol and drug rehabilitation programs, parenting classes, substance abuse and relapse prevention classes, NA/AA meetings, and individual and group counseling. She testified that she was enrolled in adult school to obtain her high school diploma and was working as an in-home adult daycare provider. Appellant stated she had been clean and sober for nearly 23 months and had secured a home that would be ready at the end of the month.

Appellant further testified that, prior to her imprisonment, appellant visited with the minor three times a week for several months. She had no visitation from the time she was sent to prison until being sent to Skyway House, a period of approximately nine months. Since her release, she has had supervised visitation with the minor once a month for one hour. During those visits, they play with dolls, building

blocks and a ball. However, the minor recognizes appellant only some of the time.

Appellant did not believe it would be harmful for the minor to leave her current placement, and felt she would be able to care for the minor "[b]y loving her, putting her in a stable home[,] "caring for her, giving her her needs[,] [f]eeding her, bathing her[;]" "doing what a mother does." When asked whether it would be in the minor's best interest to be returned to appellant's care, appellant stated it "would be in her best interest to return to me [¶] . . . [¶] [b]ecause I'm her mother and she deserves to be with her mother. I have let other children go because I thought it would be in their best interest to be away from me because I was using drugs. But this time I'm clean and I'm going to stay clean. I have a lot of support behind me in everything that I do and I always reach out and ask for help, you know. And I just think it would be best that [the minor] would be with me and I would get services. I've changed today." On cross-examination, appellant acknowledged that it might be detrimental to the minor to be removed from her current foster placement.

Appellant's case manager at Skyway House testified that appellant progressed well in treatment, was an "active participant in the groups," and "completed everything on task, if not before."

A social services aide testified that she supervised visits between appellant and the minor prior to and after appellant's time in prison. The social services aide stated the minor did

not recognize appellant any more than she recognized the aide. The minor "seems a little nervous" at the start of the visit, but "does relax somewhat" later. While appellant is affectionate with the minor, the minor is "not overly receptive," focusing mainly on the toys and the food.

Appellant's counsel argued the change in circumstances was demonstrated by the fact that appellant had been clean and sober for nearly 24 months and had successfully completed three residential rehabilitation programs. Counsel argued further that, despite minimal contact between appellant and the minor, the visits are consistent and appellant acts lovingly and appropriately. Counsel added that appellant "believes very strongly that it is in [the minor's] best interest to be returned to [appellant's] care," and "would support having [six] months of reunification services and just [to] increase visitation so [appellant] could get use[d] to having [the minor] back in her care." Counsel stated further that appellant "believes that she could be a wonderful mother to [the minor] and can provide her with a healthy and stable home. She is currently living in a stable home and working on getting her own home. She's done everything necessary to make her life a stable place so that [the minor] can be returned to her and it would be in [the minor's] best interest."

Minor's counsel acknowledged appellant's progress, but did not support granting appellant's petition, stating that moving the minor "would be very traumatic" because the minor "has

established a significant relationship with her foster parents having lived . . . [22] months with them."

The Department also acknowledged appellant's progress in her recovery, but noted she had been out of residential treatment for only two months. The Department further noted that the minor was 23 months old and had been in a stable home for a number of months since having been removed from appellant's care and there had been no showing that it would be in the minor's best interest to place her in a plan of family maintenance.

The juvenile court denied appellant's section 388 petition, finding that, although appellant sustained her burden of proof regarding a change of circumstances, she had not sustained her burden of proof that it was in the minor's best interest to be returned to appellant's care in a plan for family maintenance, or for appellant to be provided with reunification services. The court terminated the parental rights of both parents.

Appellant filed a timely notice of appeal.

DISCUSSION

I.

Appellant contends her section 388 petition demonstrated not only a change of circumstances, but also that modification of the court's order was in the minor's best interest. We disagree.

Section 388, subdivision (a) provides, in part: "Any parent . . . may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the

child was found to be a dependent child of the juvenile court . . . for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court."

Section 388 permits a modification of a dependency order if a change of circumstance or new evidence is shown and if the proposed modification is in the best interests of the child. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 526 (*Kimberly F.*)). The petitioning party has the burden of proof by a preponderance of the evidence. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 48 (*Casey D.*)).

One of the functions of section 388 is to provide "an 'escape mechanism' when parents complete a reformation in the short, final period after the termination of reunification services but before the actual termination of parental rights." (*Kimberly F., supra*, 56 Cal.App.4th at p. 528, citing *In re Marilyn H.* (1993) 5 Cal.4th 295, 309 (*Marilyn H.*)). "Even after the focus has shifted from reunification, the scheme provides a means for the court to address a legitimate change of circumstances while protecting the child's need for prompt resolution of his custody status." (*Marilyn H., supra*, at p. 309.)

The best interests of the child are of paramount consideration when a modification petition is brought after termination of reunification services. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317 (*Stephanie M.*)). In assessing the best interests of the child at this juncture, the juvenile court

looks not to the parent's interests in reunification but to the needs of the child for permanence and stability. (*Marilyn H.*, *supra*, 5 Cal.4th at p. 309.) "A petition which alleges merely changing circumstances and would mean delaying the selection of a permanent home for a child to see if a parent, who has repeatedly failed to reunify with the child, might be able to reunify at some future point, does not promote stability for the child or the child's best interests." (*Casey D.*, *supra*, 70 Cal.App.4th at p. 47.)

"[W]hen a child has been placed in foster care because of parental neglect or incapacity, after an extended period of foster care, it is within the court's discretion to decide that a child's interest in stability has come to outweigh the natural parent's interest in the care, custody and companionship of the child." (*In re Jasmon O.* (1994) 8 Cal.4th 398, 419 (*Jasmon O.*)).

A modification petition "is addressed to the sound discretion of the juvenile court and its decision will not be disturbed on appeal in the absence of a clear abuse of discretion." (*Jasmon O.*, *supra*, 8 Cal.4th at p. 415.)

"It is rare that the denial of a section 388 motion merits reversal as an abuse of discretion" (*Kimberly F.*, *supra*, 56 Cal.App.4th at p. 522.)

Applying these principles to the circumstances before us, we conclude the juvenile court did not abuse its discretion when it denied appellant's request to modify the court's previous order. As evidence that the modification would be in the

minor's best interest, appellant testified she felt that "a baby belongs with her mother." Acknowledging on cross-examination that it might be detrimental to the minor to be removed from her current foster placement, appellant stated that she could adequately care for the minor, yet failed to mention how she would address the minor's special needs.

When asked whether the requested change would be in the minor's best interest, appellant reiterated that the minor should be "with her mother" and again pointed to the change in her circumstances resulting from her efforts at obtaining sobriety. Appellant's reformation efforts are laudable. However, they are not sufficient, in and of themselves, to prove the minor's best interest would be served by removing the minor from her foster placement and returning her to appellant's care, whether it be immediate or after providing appellant with additional reunification services.

As the juvenile court noted, the minor "has a right to have permanency." The minor is thriving in a stable environment where she has been almost since her birth. There, the minor's needs are consistently met and her developmental disabilities consistently addressed with positive results.

The minor has spent very little time with appellant and does not recognize appellant as a significant figure in her life. In contrast, the minor has developed close bonds with her foster parents and siblings, with whom she has lived for nearly all of her 23 months.

Based on the testimony and evidence submitted at the hearing, the juvenile court's order denying appellant's section 388 petition was not arbitrary, capricious, or patently absurd. (*Stephanie M., supra*, 7 Cal.4th at p. 318.) There was no abuse of discretion.

II.

Appellant concludes, without factual support or substantive argument, that "the juvenile court's erroneous summary denial of appellant's section 388 petition increased the risk of erroneous findings under section 366.26, failed to comport with the precise requirements of due process, and undermined the constitutionality of the dependency process as a whole[,] " thus rendering the court's termination of appellant's parental rights "invalid."

Appellant bears the burden of showing both error and prejudice. (*People v. Coley* (1997) 52 Cal.App.4th 964, 972.) Because her appellate contentions are unsupported by analysis, we reject them. (*People v. Freeman* (1994) 8 Cal.4th 450, 482, fn. 2 [a reviewing court need not discuss claims that are asserted perfunctorily and insufficiently developed]; *People v. Hardy* (1992) 2 Cal.4th 86, 150 [same]; *People v. Galambos* (2002) 104 Cal.App.4th 1147, 1159 [appellate contentions must be supported by analysis]; *People v. Sangani* (1994) 22 Cal.App.4th 1120, 1135-1136 [appellant's legal analysis must be connected to the evidence in the case].)

In any event, given our disposition of appellant's first claim regarding denial of her section 388 petition, we need not address this claim.

DISPOSITION

The orders of the juvenile court are affirmed.

CANTIL-SAKAUYE, J.

We concur:

RAYE, Acting P. J.

BUTZ, J.